

TRANSPORTATION REPORT

From: Terry Whiteside

To: Montana Wheat & Barley Committee

Date: March 25, 2010



STB REAUTHORIZATION LEGISLATION (S.2889)

This legislation, which was reported unanimously by the Senate Commerce Committee on December 17th, continues to be the focus of conversations regarding content and enactment in 2010. While the Staff of the House Transportation and Infrastructure is very interested in drafting a companion bill for STB Reauthorization S2889. Chairman Oberstar will be important to the enactment of S.2889 in 2010 and the Committee will be instrumental in opening up the discussion of shipper legislation and needs in the House.

Editor's Note: Many of you have read that a couple of the freight railroads, who supported the development and reporting of S.2889, now are voicing opposition to the legislation "in its current form" even though no changes to S2889 have been made since it was reported by the Senate Commerce Committee. Is this railroad posturing; public negotiating; messaging for their investment community? Who knows? Maybe some of each. The bottom line may be that the certain freight railroads either want to run the legislative clock on S.2889 or cause further changes to be made to the bill that will make the bill more acceptable to the railroads and less acceptable to rail customers or are lobbying for increasing financial assistance in the future. Or, as some have suggested, just another in a series of 'broken promises' by the nation's railroads? Remember that this bill (S2889) that passed out of the Senate Commerce Committee unanimously was supported by all of the Senators on the Committee including those generally favorable to railroads concerns and was the result of hundreds of hours of compromise by both the shippers and the railroads.

However, based on a meeting of the Railroad Advocacy Group with the bipartisan Senate Commerce Committee staff last week, the sponsors of S.2889 and the bipartisan membership of the Senate Commerce Committee remain committed to enacting S.2889 in 2010. While everyone understands the difficulty of moving legislation in this Congress, this is a bipartisan compromise that settles, at least in the short run, a long standing controversy between the

freight railroads and their major customers. The sponsors of this compromise are seasoned legislators who know how to move this legislation to enactment and know the various paths to enactment that are available this year. The captive rail shippers are convinced that all of the sponsors of S.2889, including both Chairman Rockefeller and Ranking Minority Member Hutchison, remain committed to enacting S.2889 in 2010.



February 25, 2010

Dear Chairman Rockefeller, Ranking Member Hutchison, Subcommittee Chairman Lautenberg, Subcommittee Ranking Member Thune and Senator Dorgan:

We are writing to thank you for introducing and successfully reporting from the Senate Commerce, Science, and Transportation Committee S.2889, the Surface Transportation Board Reauthorization Act of 2009. S.2889 is a bipartisan compromise bill that reauthorizes the Surface Transportation Board (STB) and addresses captive rail customer concerns by increasing competition in the railroad industry, improving access to the STB, and making the STB stronger and more robust to reflect the needs of today's rail industry. We appreciate the fact that despite the long intractability of the controversy over the proper role of competition and regulation in the freight rail industry, you devoted ten months of effort to develop this legislation through a process that provided a fair opportunity for both rail customers and railroads to have extensive input regarding the issues addressed in the bill.

Rail customers have not gotten everything we want in S. 2889. However, S.2889 is a significant improvement over the status quo for many rail customers, and it provides much needed reform at the STB. For example, S.2889 will increase competition by requiring major railroads to quote "bottleneck rates" and "terminal switching rates" and allowing parties to challenge existing and future paper barriers, and increase the STB's scrutiny of future railroad mergers. Additionally, S. 2889 will improve access to the STB by lowering filing fees for shippers to bring a complaint to the STB, it will allow the STB's simplified rate dispute methods to be used by more shippers and for larger cases,

and it will allow certain cases to be resolved through arbitration. Finally, S.2889 will make the STB stronger and more robust, by updating the existing rail policy to reflect the current state of today's healthy rail industry and will provide the STB independent investigative authority so it can begin investigations on its own initiative, and will make the Board a truly independent agency.

S.2889 is important legislation that is needed if the principles of the Staggers Rail Act of 1980 are to be implemented fairly and fully. If enacted, the bill will diminish the current controversy between the major freight railroads and their customers. The STB will be more proactive regarding rail customer concerns and will have the resources it needs to promote a national freight rail system that works for the freight railroads, their customers, consumers and the nation. We also strongly support the inclusion of provisions from S.146, the Railroad Antitrust Enforcement Act of 2009, before S.2889 is considered by the full Senate.

We look forward to continuing to work with the Committee and others in the Senate as this bill moves to the floor and is enacted into law in 2010.

Sincerely,

Glenn English
Chief Executive Officer
National Rural Electric Cooperative Association

Bruce Carlton
President and Chief Executive
The National Industrial Transportation League

Cal Dooley
President and Chief Executive
American Chemistry Council

Mary J. Healey
President
National Association of State Utility Consumer Advocates

Don Kimball
President
Consumers United for Rail Equity

Charles D. Gray
National Association of Regulatory Utility Commissioners

Donna Harman
President and Chief Executive Officer
American Forest & Paper Association

Kendell Keith
President
National Grain and Feed Association

Thomas R. Kuhn
President
Edison Electric Institute

Mark Crisson
President and Chief Executive Officer
American Public Power Association

Ford B. West
President
The Fertilizer Institute

Terry Whiteside
Chairman
Alliance for Rail Competition

Stephen Brobeck
Executive Director
Consumer Federation of America

Senator John Thune Wants STB to Handle All Competition Issues

from The Journal of Commerce

John D. Boyd | Mar 17, 2010 5:18PM GMT

Senator backs commerce committee bill, rail antitrust exemption

Sen. John Thune, R-S.D., said he would like to see the emerging rail regulation overhaul put a "more robust" Surface Transportation Board in charge of rail competition issues, rather than Congress stripping railroads of their limited antitrust exemption.

How to add promised language that changes railroads' antitrust treatment has become a significant issue in recent months, after the Commerce, Science and Transportation Committee on Dec. 17 passed a rail competition bill without it.

"Seems to me there's a better way of addressing this through the Surface Transportation Board, and so I hope we can do it that way," Thune said.

As the top Republican on the subcommittee that handles rail issues, Thune is a key sponsor of the bill that would reauthorize and expand the STB while setting new rules on rail services and rate competition that lean toward shipper goals.

When the commerce panel passed its bill, Chairman Jay Rockefeller, D-W.Va., said he had to leave off the antitrust piece to get the legislation through his committee. However, Rockefeller said he opposes leaving railroads treated differently from other companies under antitrust law, and would craft an antitrust provision before sending the bill to the full Senate.

Since then, railroad executives have sharply criticized the bill, saying it goes too far to toughen federal regulations and would threaten their profits. Many railroad leaders say the undecided antitrust language remains a major concern for them, as it could potentially open them to legal challenges over issues now handled just by the STB.

"I think an empowered, more robust STB can certainly handle these issues in a way that doesn't involve more of the litigation, and more, that could come with the other approach," Thune told The Journal of Commerce

He said the Senate's 2010 legislative calendar is quickly filling up with legislation other than the STB bill, but "I hope that it still can be voted on this year."

Meantime, talks continue with all the parties involved, Thune added. "The railroads have some concerns about the final product - or at least the product to date. But we continue to visit, to discuss with them and with the shipper community, how best to resolve them."

**Make plans to attend Rail Customer Day
on Wednesday, May 5th in Washington,
D.C. ...more information to come.**